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Attorneys for Debtors and
Debtors in Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes, et al.,¹
Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

Affects:

- ☐ All Debtors
☒ Affects the following Debtor(s):
Apache Framing
Pinnacle Grading
Rhodes Design and Development
Corporation
The Rhodes Companies
Tribes Holdings
Tuscany Golf Country Club

Hearing Date: December 17 2009
Hearing Time: 9:30 a.m.
Courtroom 1

¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache

**DEBTORS' FIFTH OMNIBUS OBJECTION TO CLAIMS PURSUANT TO SECTION
502(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULES 3003 AND 3007 [BOOKS AND RECORDS CLAIMS];
DECLARATION OF PAUL D. HUYGENS IN SUPPORT THEREOF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby object (the “Fifth Omnibus Objection”) to each of the claims (the “Books and Records Claims”), identified herein on **Exhibit A**, pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and request the entry of an order (the “Order”) disallowing and expunging in full each of the Books and Records Claims.² The proofs of claim for the Books and Records Claims are attached hereto as **Exhibit B**. In support of this Fifth Omnibus Objection, the Debtors rely on the *Declaration of Paul D. Huygens in Support of Debtors' Fifth Omnibus Objection to Claims [Books and Records Claims]*, attached hereto. In further support of this Fifth Omnibus Objection, the Debtors respectfully represent as follows:

BACKGROUND

1. On March 31, 2009, the above-captioned Debtors (the “Primary Filers”), except Tuscany Golf Country Club, LLC, Pinnacle Grading, LLC, and Rhodes Homes Arizona, LLC (the “Secondary Filers”), filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code. On April 1, 2009, the Secondary Filers filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. All references to Petition Date herein shall mean March 31, 2009 for the Primary Filers or April 1, 2009 for the Secondary Filers, as applicable.

Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf and Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

² The Debtors reserve the right to file additional omnibus objections, whether on substantive or non-substantive grounds, to any and all other claims filed against their estates.

1 The Debtors are continuing in possession of their property and are operating and managing their
2 businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy
3 Code.

4 2. The Debtors object to each of the Books and Records Claims set forth in **Exhibit**
5 **A**. The proofs of claim are attached hereto as **Exhibit B**.

6 **RELIEF REQUESTED**

7 3. By this Fifth Omnibus Objection, the Debtors seek entry of an order, pursuant to
8 section 502(b) of the Bankruptcy Code and Bankruptcy Rules 3003 and 3007, disallowing and
9 expunging in full each of the Books and Records Claims set forth in **Exhibit A**.

10 **OBJECTION**

11 4. The Debtors' object to the Books and Records Claims because the Books and
12 Records Claims are not supported by the Debtors' books and records, which indicate that no
13 sums are owing. Therefore, the Books and Records Claims listed on **Exhibit A** should be
14 disallowed in their entirety.

15 5. Bankruptcy Code section 502 authorizes a party in interest to object to claims.
16 *See* 11 U.S.C. §502(a). Although a proper proof of claim is presumed valid under Bankruptcy
17 Rule 3001(f), once an objection controverts the presumption, the creditor has the ultimate burden
18 of persuasion as to the validity and amount of the claim. *Ashford v. Consolidated Pioneer*
19 *Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff'd*, 91
20 F.3d 151 (9th Cir. 1996) (quoting *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3d
21 Cir. 1992)). The Bankruptcy Appellate Panel for the Ninth Circuit explained the shifting
22 burdens of proof with respect to objection to proofs of claim as follows:

23
24 The burden of proof for claims brought in the bankruptcy court
25 under 11 U.S.C.A. § 502(a) rests on different parties at different
26 times. Initially, the claimant must allege facts sufficient to support
27 the claim. If the averments in his filed claim meet this standard of
28 sufficiency, it is "prima facie" valid. In other words, a claim that

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alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. . . . The burden of persuasion is always on the claimant.

Id. (emphasis added). Following this decision, the District Court for the Northern District of California emphasized, "unless the claimant has alleged 'facts sufficient to support a legal liability, 'the claim is not prima facie valid.'" *In re Hongnisto*, 293 B.R. 45, 50 (N.D. Cal. 2003) (quoting *Consolidated Pioneer Mortg.*, 178 B.R. at 266) (holding that the claimant's proof of claim failed to allege sufficient facts to support a legal liability and consequently disallowed the proof of claim); *see Consolidated Pioneer Mortg.*, 178 B.R. at 227 (holding that because the proof of claim did not allege sufficient facts to support the claim, the proof of claim was disallowed).

6. Based on the Debtors' review of their books and records and the disputed Books and Records Claims, the claimants have no valid legal justification for asserting the Books and Records Claims against the given Debtor as filed. As a result, the Debtors submit that the Books and Records Claims should be disallowed in their entirety.

CONCLUSION

7. The Debtors object to the allowance of the Books and Records Claims for the reasons stated herein, and the Debtors hereby move this Court for an Order disallowing each of the Books and Records Claims.

NOTICE

8. Notice of this objection has been provided to (i) the Office of the United States Trustee, (ii) counsel to the Creditors' Committee, (iii) each holder of a Books and Records Claim to which the Debtors are objecting in this Fifth Omnibus Objection in accordance with the addresses provided in the proof of claim for each Books and Records Claim, (iv) each person or entity that has filed a notice of appearance and request for special notice, and (v) other required parties pursuant to the Court's case management order entered in these cases. The Debtors submit that in light of the nature of the relief requested herein, no other or further notice is required.

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9. Pursuant to Bankruptcy Rule 3007, the Debtors have provided all claimants affected by the Fifth Omnibus Objection with at least thirty (30) days' notice of the hearing on the Omnibus Objection.

DATED this 17th day of November, 2009.

/s/ Zachariah Larson, Esq.
Zachariah Larson, Bar No. 7787
Kyle O. Stephens, Bar No. 7928
810 S. Casino Center Blvd., Suite 104
Las Vegas, NV 89101
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Attorneys for Debtors and Debtors in
Possession

**DECLARATION OF PAUL D. HUYGENS IN SUPPORT OF DEBTORS' OMNIBUS
OBJECTION TO CLAIMS [BOOKS AND RECORDS CLAIMS]**

I, Paul D. Huygens, declare as follows:

1. I am the Senior Vice President of Special Projects of the above-captioned debtors and debtors in possession (the "Debtors"). The facts set forth in this Declaration are personally known to me and, if called as a witness, I could and would testify thereto.

2. This declaration is submitted in support of the *Debtors' Fifth Omnibus Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code and Bankruptcy Rules 3003 and 3007[Books and Records Claims]* (the "Fifth Omnibus Objection").

3. I am one of the persons responsible for overseeing the claims reconciliation and objection process in the Debtors' chapter 11 cases. I have read the Debtors' Fifth Omnibus Objection and am directly, or by and through my personnel or agents, familiar with the information contained therein.

4. The claims and attached information and documentation were carefully reviewed and analyzed in good faith, and the Debtors' books and records were referenced for additional support, utilizing due diligence by appropriate personnel of the Debtors. These efforts have resulted in the identification of the disputed "Books and Records Claims", as identified in **Exhibit A** to the Fifth Omnibus Objection. The proofs of claim for the Books and Records Claims are attached as **Exhibit B** to the Fifth Omnibus Objection. I have personally reviewed each of the Books and Records Claims.

5. Based on a thorough review of their books and records, the Debtors submit that the Debtors' books and records show that no sums are owing for the Books and Records Claims. Therefore, Books and Records Claims listed on **Exhibit A** should be disallowed in their entirety.

6. I believe that granting the relief requested in the Fifth Omnibus Objection is in the best interests of the Debtors, their estates and their creditors.

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1 I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true
2 and correct to the best of my knowledge, information, and belief.

3 Executed this 17th day of November, 2009, at Las Vegas, Nevada.

4 /s/ Paul D. Huygens

5 Paul D. Huygens
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EXHIBIT A

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EXHIBIT A

To Fifth Omnibus Objection to Claims

[Books & Records – Disallow]

Claim No.	Claimant Name	Filed in Debtor Case	Claim Amount Secured	Claimed Amount Unsecured	Claimed Amount Priority	Total Claimed Amount	Modified Amount Secured	Modified Amount Priority	Modified Amount Unsecured	Total Modified Amount	Proposed Treatment/Disposition
1	FLAGSTAFF LANDSCAPE PRODUCTS INC ATTN: WILLIAM S WEISS P.O. BOX 30326 FLAGSTAFF, AZ 86003	09-14887		2,335.97		2,335.97				0.00	Disallow claim in its entirety
2	IRENE MINDO & TEOFILLO JOSE 329 W. PADRE SANTA BARBARA, CA 93105	09-14818		11,000.00		11,000.001				0.00	Disallow claim in its entirety
18	PROLINK SYSTEMS, INC ATTN: BIRTHE MURRAY 410 SOUTH BENSON LANE CHANDLER, AZ 85224	09-14884		1,920.00		1,920.00				0.00	Disallow claim in its entirety
30	SIMPLEX GRINNELL ATTN: BANKRUPTCY 50 TECHNOLOGY DRIVE WESTMINSTER, MA 01441	09-14814		4,624.94		4,624.94				0.00	Disallow claim in its entirety
17	US YELLOW ATTN: TRACI MASTROCINQUE PO BOX 3110 JERSEY CITY, NJ 07303	09-14846		1,291.16		1,291.16				0.00	Disallow claim in its entirety
14	WESTAR KITCHEN & BATH, INC. C/O DONALD H. WILLIAMS, ESQ. 612 SOUTH TENTH STREET LAS VEGAS, NV 89101	09-14814	9,733.08	50,576.26		60,309.34				0.00	Disallow claim in its entirety